

Application No. 09/149,810

REMARKS

Claims 1-60 are pending in the application. By this Amendment, the specification has been corrected to remove the informalities noted by Examiner in objecting to the disclosure. A correction to claim 1 to correct for a typographical error and a correction to claim 24 have been made. Claims 4-8, 11-12, 19-21, 28-32 and claim 47 have been rewritten in independent form as required by the Examiner to place the claims in condition for allowance. Claims 49-55, and 59-60 are withdrawn pursuant to an election made with traverse to prosecute the invention of group I: claims 1-48, and 56-58. Claims 15, and 16 have been canceled. Claims 1, 33, 56, 57 and 58 have been amended. Support for the amended claims can be found, for example, in connection with the description of Figs. 6 and 8. No new matter has been added.

Election/Restrictions

Examiner has indicated that restriction to one of the following inventions is required under 35 USC 121: claims 1-48 and 56-58 drawn to flow control of data transmission through a network and falling under class 370, subclass 235; and claims 49-55, and 59-60, drawn to queuing arrangement, classified in class 370, subclass 412.

The Applicants' attorney thanks the Examiner for the courtesy extended in granting a telephonic interview on January 07, 2005. During the conversation, Applicants' attorney made a provisional election with traverse to prosecute the invention of the group I, claims 1-48, and 56-58. Applicants' attorney indicated that a response would be prepared and filed.

Applicant affirms this election in this reply to the Office action.

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Specification

The disclosure was objected to because of some informalities noted by Examiner. Applicant has corrected the specification to delete the Attorney Docket No. in the Cross-Reference section, and in pages 21-23 and inserted the corresponding serial number into the cited U.S. Patent application in page 21-line 8, page 22-line 20, and page 23-line 2.

Claim Objections

Claims 1-32 were objected to because of a typographical error in claim 1 and the use of an acronym in claim 24. The typographical error in claim 1 has been corrected and the acronym in claim 24 has been written in full to comply with Examiners' requirements. The corrections bring the claims into conformance with Examiners' requirements and result in no new matter being added thereby.

Applicant respectfully requests that the objections to claims 1-32 be withdrawn.

35 U.S.C. § 102(b)

Claims 1-3, 9-10, 15-18, 22-27, 33-37, 44-46, 48, and 56-58 were rejected under 35 USC 102(b) as being anticipated by Heinanen et al. ("A Two Rate Three Color Marker", University of Pennsylvania, September 1999, pp. 1-5 -in record), hereinafter referred as Heinanen. Applicants respectfully traverse this rejection. However, in order to further the prosecution of this Application, Applicants have amended claims 1, 33, 56, 57, and 58.

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Claims 1, 33, 56, 57 and 58 have been amended to recite classifying the data stream into at least one traffic flow using information other than a Peak Information Rate (PIR) or a Committed Information Rate (CIR) to distinguish the traffic flows. Heinenen discloses a Peak Information Rate (PIR) and a Committed Information Rate (CIR) for distinguishing between packets. The claims as amended expressly exclude Peak Information Rate (PIR) and a Committed Information Rate (CIR) and their associated burst sizes (PBS, and CBS respectively) for the purpose of *distinguishing between the traffic flows* in a data stream. Support for the amendment can be found, for example, in the description related to Figures 6-8 for example.

"For a prior art reference to anticipate in terms of 35 U.S.C. § 102, *every element of the claimed invention* must be identically shown in a single reference." See MPEP § 2131. (Emphasis supplied). Heinenen does not identically show every element of the invention as claimed after claim amendment. Therefore, Heinenen does not anticipate independent claims 1, 33, 56, 57 and 58. Because 2-3, 9-10, 15-18, 22-27, 34-37, 44-46, 48, and 57-58 directly or indirectly depend from one of independent claims 1, 33, 56, 57 and 58, Heinenen does not anticipate the dependent claims either.

The fact that other information may be present in the packet or that such other information may be used as a component for ingress policing of a service is of no moment for the purposes of this Office Action because Heinenen does not expressly or inherently disclose, teach or suggest parameters other than the PIR and the CIR (and their associated burst sizes) for distinguishing between traffic flows in a data stream.

As such, Applicants respectfully request that the rejection to claims 1-3, 9-10, 15-18, 22-27, 33-37, 44-46, 48 and 56-58 under 35 U.S.C. § 102(b) be withdrawn.

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35 U.S.C. § 103(a)

Claims 13, 14, 38-43, 19, 20, and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Heinanen in view of Carter et al. (U.S. Patent 6,538,989) (hereinafter "Carter"). This rejection is respectfully traversed.

Applicant has amended claims 1, 33, 56, 57 and 58. Rejected claims 13, 14, 38-43, 19, 20 and 21 directly or indirectly depend from one of the amended claims. No new matter has been added. Applicant respectfully submits that neither Heinanen nor Carter disclose, teach or suggest all the limitations of amended claims 1, 33, 56, 57 and 58. Heinanen discloses a Peak Information Rate (PIR) and a Committed Information Rate (CIR) and their respective burst sizes for distinguishing between packets. See *Abstract*, Heinanen page 1. The packets in Carter are associated with one of two network modes: bounded delay mode or best effort network modes of operation as seen in connection with the description of fig. 1(a) of Carter. Col. 5, lines 23 -28. Neither Heinanen nor Carter disclose, suggest or provide a motivation for one of ordinary skill in the art to combine the teaching of Heinanen and Carter to arrive at the invention of amended claims 1 and 33. Therefore, a prima facie case for obviousness cannot be established for the inventions claimed in claims 1, 33, 56, 57 and 58. As such, Applicants respectfully request that the rejection to claims 1, 33, 56, 57 and 58 be withdrawn. Because, claims 13, 14, 38-43, 19, 20 and 21 directly or indirectly depend from one of the amended claims, a prima facie case for obviousness cannot be established in regards to claims 13, 14, 38-43, 19, 20 and 21 either.

In view of the foregoing, it is submitted that claims 13, 14, 38-43, 19, 20, and 21 are in condition for allowance and Applicant respectfully requests the rejection under 35 U.S.C. 103(a) be withdrawn.

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Allowable Subject Matter

Applicant thanks the Examiner for indicating the presence of allowable subject matter in the application. Examiner objected to claim 47 as being dependent upon a rejected base claim, but indicated that it would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has rewritten claim 47 so that it is in independent form including all of the limitations of the base claim and all intervening claims to place the claim in condition for allowance.

Claims 4-8, 11-12, 19-21, and 28-32 were objected to as being dependent upon a rejected base claim. However, Examiner indicated they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and further to overcome the objections set forth in the section entitled "Objections" above. Applicant has rewritten each of claims 4-8, 11-12, 19-21, and 28-32 in independent form including all of the limitations of the base claim and all intervening claims as required by Examiner to place the claims in condition for allowance.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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